

**Colorado Bar Association Trusts & Estates Section  
Uniform Fiduciary Income & Principal Act Subcommittee  
of the Statutory Revisions Committee**

**Minutes of April 1, 2020**

**Participants**

In person:	By phone:
	• Klaralee Charlton
	• Darla Daniel
	• Kate Keiser
	• Stan Kent
	• Georgine Kryda, Chair
	• Eugene Zuspahn

**Initial Assignments**

UFIPA Article	Lead Reviewer(s)
1 General Provisions	Stan K.
2 Fiduciary Duties and Judicial Review	Herb T.& Darla D.
3 Unitrust	Susan B.
4 Allocation of Receipts During Administration	Russ G. & Peggy G.& Walt. K.
5 Allocation of Disbursement During Administration	Jonathan H.
6 Death of Decedent	Georgine K. & Eugene Z.
7 Apportionment at Beginning and End of Income Interest	Klaralee C.
8 Miscellaneous Provisions	Kate K.

The meeting was held by teleconference coordinated by the CBA Offices, 1290 Broadway, Suite 1700 in Denver.

The meeting was called to order at 10:40 a.m. by the Chair and adjourned at 12:05 p.m. Minutes of March 4, 2020 were approved.

**Part 1, Section 102 Definitions (tabled pending completion of UFIPA review) - Stan**

- 102(3) Beneficiary
- 102(5) Current Income Beneficiary
- 102(6) Distribution
- 102(7) Estate
- 102(8) Fiduciary
- 102(9) Income
- 102(10) Income Interest
- 102(11) Independent Person
- 102(12) Mandatory Income Interest
- 102(13) Net Income
- 102(18) Settlor
- 102(19) Special Tax Benefit
- 102(21) Successor Beneficiary

The subcommittee compared the UFIPA definitions of the above terms with those available in the CUTC; however, UFIPA will apply to estates and life estates as well as to trusts. Because UFIPA is broader than trust law, there is a preference for staying with UFIPA definitions for internal consistency.

The subcommittee also reviewed the notes from May 2018 regarding the above terms. Earlier potential issues appear to have been resolved. The subcommittee did discuss **102(21) Successor Beneficiary** again, specifically the use of “entitled” versus “eligible” using the following hypothetical: What if parents settle a trust for the benefit of their daughter or her issue? Daughter and her issue as a class would be eligible for distributions, but not entitled to receive them until the trust terminates? The subcommittee focused on the latter part of the definition regarding “when an income interest or other current interest ends” as clarifying when entitlement to income would arise.

Thus, the subcommittee supports using the UFIPA definitions as proposed.

## **Part 6, Death of Decedent – Georgine K. and Gene Z.**

### **601 - Determination and Distribution of Net Income**

- UFIPA offers two optional subsections (d) and (e) for states without a provision for interest to be paid on a pecuniary distribution from a trust.
  - Subsection (d) allows interest to be paid from income, to the extent income is sufficient.
  - Subsection (e) requires interest be paid in the same manner interest would be paid on a pecuniary bequest under a Will.
- C.R.S. § 15-12-904 in Colorado’s Probate Code provides for interest on a general pecuniary devise, and states in its entirety:

“General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.”
- 601(e) - The subcommittee supports labeling 601(e) as “Reserved.”

### **602 – Distribution to Successor Beneficiary**

- Gene will provide revised wording for 602(a) and for 602(b).
- Regarding 602(b)(2), the objective is to simplify the calculation. While the trustee cannot act out of pure discretion (especially where the trustee is also a beneficiary), it should be possible to streamline the parameters to have the trustee make reasonable distributions based on known information.

## **Part 8, Miscellaneous Provisions – Kate**

- The subcommittee had reached consensus in support of §§ 801, 802, 804, and 806.
- **Regarding §§ 803, 805, and 806** – we need to look at 803 and 805 jointly; Gene will provide proposed wording.
  - **803, Application to Trust or Estate:**
    - Should 2000 UPIA (effective July 2001) be repealed in its entirety?
    - If 2000 UPIA is repealed in its entirety, would that adversely affect estates already under administration?
    - Should we provide a one-year opt-out provision as in C.R.S. § 15-1-435?
    - C.R.S. § 15-1-405 provides qualified beneficiaries with an ability to opt out, and contains a notice requirement.
      - Consensus to circulate any 435 or 405 type alternatives among Dan Rich, Aaron Azari, and other bank trustees.
    - Georgine to follow up with Susan Harris regarding any concerns about life estates under UFIPA.
      - Gene noted that some states passed UFIPA so that UFIPA did not apply to life estates and instead relied on state law; however, Gene’s initial survey of Colorado law did not find extensive guidance regarding life estates.
  - **805, Repeals & Conforming Amendments:**
    - This section will be based on the structure of 803.
  - **806, Effective Date:** We probably can make this “Reserved” and retitle 803 as “Effective Date; Application to Trust or Estate.”

## **Final Administrative Steps**

Georgine to discuss with Steve Brainerd regarding what the subcommittee actually needs to provide in terms of a:

- memo for transmitting the UFIPA review to the SRC, and
- proposed summary for presentation to the legislature.

## **For the May 6, 2020 meeting:**

- Vote to approve remaining definitions for Section 102.
- Vote to approve 601 with 601(e) as “Reserved.”
- Discuss Gene’s proposed wording for 602 and possibly vote on 602.
- Discuss Gene’s proposed wording for 803 and 805 and possible vote on part 8.
- Review Georgine’s initial draft memo for transmitting the UFIPA review to the SRC, and discuss whether this subcommittee needs to provide any type of legislative summary.
- Discussion of final steps.

**The next meeting** will be on May 6, 2020 at 10:30 a.m. to noon either via teleconference or at the CBA Offices, 1290 Broadway, Suite 1700 in Denver.